

Cottage Grove Municipal Court 400 Main St. Cottage Grove, OR 97424 (541)767-4115

MEMORANDUM

TO:

Mayor and City Council

FROM:

Martin Fisher, Municipal Court Judge

SUBJECT:

2018 Municipal Court Report

DATE:

November 29, 2018

Background.

The Cottage Grove Municipal Court handles traffic violations and misdemeanor crimes. Misdemeanors are those crimes with a maximum penalty of not more than 364 days in jail and a \$6,250.00 fine. The court may also impose a period of probation up to a maximum of five years. Examples of such crimes include DUII, assault IV, resisting arrest, trespassing, disorderly conduct, and theft (typically shoplifting from local retailers).

Case Load and Collections.

2018 saw an uptick in the number of criminal citations and non-criminal violations brought into court over the past five years.

	2013	2014	2015	2016	2017	2018	Average	2018 to Average
Citations	944	705	659	864	571	708	742	95%
Violations	1,246	954	1,060	1,373	888	1,156	1,113	104%
Fines							,	
assessed	\$217,703.43	\$166,688.60	\$230,167.52	\$274,769.92	\$149,872.11	\$179,405.00	\$203,101.10	88%
Fines								
collected	\$59,404.05	\$31,058.90	\$34,996.88	\$55,535.50	\$28,156.90	\$35,432.22	\$40,764.08	87%

The 2018 criminal caseload was 95% that of the six-year average (including 2018), and 104% of the non-criminal violation caseload. Likewise, assessed fines were 88% of average, while fines collected increased to 87% of average, up from 67% in 2017.

As I have noted in every prior report, there is still no way to distinguish between criminal and traffic fines. Likewise, there is no way to distinguish whether fines paid in 2018 relate to fines assessed in 2018, or relate to payment of outstanding fines from prior years.

Nonetheless, the court continues its efforts to process and collect outstanding fines assessed from the past 10 years. Those efforts continue to generate revenue, although again they are not broken out against current year's fines.

As I noted last year, the court has more often than not declined to impose fines as a condition of a criminal judgment. As will be reflected below in a discussion of crime categories, the vast majority of the defendants cited into court on criminal charges live in poverty or near poverty. I have come to realize that assessing fines that will never be paid serves nobody and accomplishes nothing. Rather, we have been replacing fines with community service alternatives and, in certain instances, additional jail time.

Because fines serve one of two functions, the above alternatives are appropriately related. Fines can either be an effort to make a defendant give something back to the community, which is also served via community service, or they can be punitive, which can be served via jail time. The key, then, is deciding on a goal, and then choosing a sanction most likely to achieve that goal.

Crime Categories.

Below is an overview of certain crimes that the court deals with, and a review of related trends. (I have attached the 2018 reports, to date). Please note that, given the way the report is ran, these numbers to not match the numbers reflected above.

The most common offenses seen are as follows (sorted in descending order for 2018):

Offense	2014	2015	2016	2017	2018
Failure to appear on a criminal citation or in the second degree	126	220	240	162	109
Criminal Trespass (I & II)	35	63	63	97	84
Theft III (less than \$100)	121	110	106	90	64
Disorderly Conduct II	38	60	22	21	28
Theft II (more than \$100, less than \$1,000)	32	35	45	29	27

DUII	37	34	28	30	26
Criminal Mischief (II & III)	76	20	15	27	13
Assault IV	31	21	13	3	6
Physical Harassment	61	60	37	14	13

Crimes such as theft, criminal mischief, disorderly conduct and criminal trespass are offenses that tend to have broader impact throughout the community. Unlike in larger cities, many of our cases involve neighbor disputes that have disrupted an entire neighborhood, stolen bicycles, stolen phones, loitering at business intending to commit theft or harassing customers, etc.

Cottage Grove is fortunate to have a police department that actively investigates these crimes. People get their stolen bikes back. Their cell phones are recovered. Shop owners and their customers are allowed to transact business in peace. When cars are rifled through for spare change and random electronics, violating the citizens' sense of safety and security even with minimal financial loss, those actions are taken serious and the offenders brought to justice.

Consistent with the reduction in assessed fines due to poverty, many of the crimes noted above are crimes that reflect that poverty. For example, the crime of criminal trespass tends to impact the homeless more than any other population. Likewise, the crime of theft III, which essentially covers low-dollar shoplifting, is a reflection of poverty.

As reflected above, crimes of domestic violence (assault and harassment) continue to be cited into circuit court, leaving the appearance of a decrease in that category of criminal activity. The Lane County District Attorney's Office obtained a federal grant to prosecute domestic violence crimes. However, to maintain that grant requires the DA to take on *all* domestic violence cases. Consequently, those are no longer being cited into our court. This is unfortunate, as we have no way to determine whether the circuit court is taking adequate measures to protect domestic violence victims in Cottage Grove.

Changes in the court's schedule.

In an ongoing effort to increase efficiency, the court has significantly modified its schedule. Previously, court simply convened every Thursday and addressed both new and old cases. Earlier this year, the schedule was changed so that the second and fourth

Thursdays were reserved for trials, but if no trials were schedule within a certain time frame, new cases might be cited in on that day if necessary.

In October, the court changed the schedule further. Now, new cases are cited into court only on the first Thursday of every month. Ensuring that new cases only get cited on one day reduces the potential for defendants to be cited in on the wrong day, and it allows officers to cite without first checking to learn the next available court date.

The second Thursday of the month is reserved for jury trials. If there are no jury trials on that date, there is no court.

The third Thursday is set aside for subsequent appearances for defendants who have had an initial appearance and whose cases require further attention. No new cases are heard that day.

The fourth Thursday is set aside for bench trials. That is, trials without a jury.

Once per quarter there is a fifth Thursday, which is used as an overflow day if a backlog should develop.

The court is also considering creating a non-English docket one time per month. The process of utilizing an interpreter is massively time consuming and causes significant delay to other cases.

So far, feedback on the new schedule seems positive. People spend less time sitting around in court waiting for cases to be called and instead can get in and out with less hassle, while simultaneously having more focused and effective court appearances. It also eliminates any uncertainty regarding subsequent appearances, which is often the excuse used by people who fail to appear, i.e., they forgot the date. With the new schedule, they only need to remember the third Thursday. Hopefully that will reduce the number of people who fail to appear.

Moreover, by reducing the number of potential jury trial dates to one day per month, the court can minimize the impact on the community of having to summon jurors.

Trials.

The court held no jury trials in 2018. There were perhaps two cases in which jurors were required to appear and the case settled that morning. The court has held a handful of bench trials. It remains a basic truism that there is something about the reality of trial that brings clarity to a defendant and results in a change of plea.

In an update to last year's report, after that report was submitted, the court held its one and only jury trial of 2017. Thus, there has only been one jury trial in two years. That is a testament to the work of our attorneys, both prosecution and defense, to work toward and achieve fair resolutions.

That said, there is a near guarantee of a jury trial on December 13th.

Truancy.

The court continues to address truancy citations brought by the high school and middle school. In essence, when a student fails to attend a sufficient number of classes, and after the school has followed a statutory process of notice and reaching out to the parents, the parents are cited into our court for failing to ensure their child attends school. The maximum penalty is a \$500 fine per unexcused absence for the parent(s).

Perhaps half of those students eventually transfer schools or school districts, and for the most part, the remainder tend to have success the rest of the school year. With some exception, the court's typical approach is to direct the parent to bring the child to court (if they have not already) and then impose a \$500 fine, but suspend it in full so long as the school does not cite the parent for further attendance problems. As that happens with both the child and parent standing next to each other, the message seems to get through to both of them. I would estimate that of the 27 truancy citations the court has seen in 2018, the fine has been fully imposed in perhaps four cases.

The impact of the truancy program has apparently been quite positive over the past few years that we have had it. I solicited input from Chris Wells at Cottage Grove High School, and from Jeremy Smith at Lincoln Middle School. Mr. Wells provided the following response:

"The impact of the municipal court as a tool in the array of methods has netted results. In conjunction with the creation of the dean position at the high school, the steps we take and the court as a terminus of the process has helped to reduce absenteeism. During the 2016-17 school year, 24% of students were chronically absent (10%+ of the school year missed). With the partnership of the municipal court our chronic absenteeism for the 2017-18 year was 12%. The average attendance rate of a CGHS student rose to 94.1% through June, which was a percentage point over the previous year.

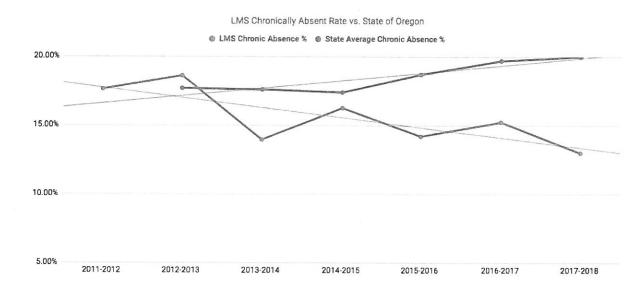
"In a less statistical way, there are students and families the court hasn't seen because the possibility of a court date and fine finally hits home with a student. They see the impact financially and emotionally on their parents, then a change comes. It's the needed hard stop that the students (or sometimes the parent) needs to restart in a better direction. Unfortunately, the court doesn't get to see those successful transitions. Statistically, most cases are successful, I've written 97 truancy warning letters, 26 parent meeting requests, 11 parent meetings held and only 7 citations issued (some are pending delivery). As a deterrence, it appears to be working."

Likewise, Mr. Smith provided the following response:

"When the hearing comes we know that you've already gotten most of our documentation and background and that allows the time to be dedicated to the parent and student. When I describe this process to parents that may be cited I say "the judge is compassionate and understanding, but also holds families and kids accountable to the law." The way you question them, share your perspective, and frame the issue is not only fair but also has helped to change the behavior of these families. We nearly always see an increase in attendance for the families that go to court.

"We've been doing a lot of work around attendance the last few years, including using your court instead of the one in Eugene and we've seen a nice drop in our students who are chronically absent (see attached graph). We are feeling hopeful that this year will be even better, since right how we only have about 10% of kids that are in that category."

Mr. Smith also provided the following chart that reflects the changes at LMS:



Lastly, we have created a dedicated truancy docket, so all cases are cited to 3:30 PM on the first Thursday of every month. Previously, those cases were simply cited into regular court at 9:00 AM. Obviously, dragging kids out of school to address their being out of school was not the ideal process, not was taking away from the school administrator's work day. The new schedule avoids both of those problems.

Driver's license suspensions and fines.

Some months back, the Oregon Law Center filed a lawsuit in federal court asking a judge to order the DMV to stop suspending the driver's licenses of people who fail to pay traffic fines due to indigency or other financial hardship. That case, *Mendoza et al v. Garrett et al*, has generated a public records request to nearly every court in Oregon, including Cottage Grove. The request seeks information regarding how courts address people who don't pay traffic fines and what steps are taken to contact those people before requesting DMV suspend the license.

This is part of a trend nationwide. Recently, the state of California enacted a law that ended the state's ability to suspend licenses for non-payment of traffic fines. In signing the law, the governor of California indicated a belief that suspending licenses had no appreciable impact on collections.

Moreover, there have been numerous stories about relatively minimal traffic fines of a few hundred dollars ballooning into the thousands, turning fines that might be difficult to manage into fines that are impossible. Those people then continue to drive, because, they claim, it's necessary for them to maintain employment.

Our court's experience is the polar opposite of the purported California rationale. Quite simply, suspending driver's licenses generates payment of fines. In any event, we will be subject to whatever decision the federal court eventually makes, and consequently may lose our ability to collect traffic fines from all but the most wealthy of offenders.

Jailing of female defendants.

As the council may recall, one of the challenges facing the court is the lack of ability to effectively jail female defendants. Our city jail cannot hold females, so they are sent to Lane County Jail. However, with minimal exceptions, that is effectively the same as sending them to no jail at all. For example, a female defendant was recently sentenced to several months in jail and served less than a week before being released with her sentence being credited as served in full.

Last year's effort to address this problem with a female road-crew program ran through the CGPD turned out to be ineffective and was abandoned, in no small part due to the low number of female defendants and the significant resource commitment by the police department.

Changes in handling in-custody criminal defendants.

Last year's Ninth Circuit Court of Appeals decision in *U.S. v. Sanchez-Gomez*, 859 F3d 649 (2017), which prohibited the "shackling" of defendants in court without a finding of good cause, was overturned by the U.S. Supreme Court. Thus, the CGPD is once again able to ensure the safety and security of the courtroom when addressing defendants who are in custody.

Conclusion.

The court continues to make progress toward balancing efficiency with justice and providing the best level of service to the people of Cottage Grove. As always, I welcome any and all feedback and suggestions for improvement toward that goal, and I thank you for the opportunity to continue my service as municipal court judge.

<u>Recommendation.</u> For information only.

Cost. None.

Martin M. Fisher, Municipal Court Judge

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